IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2782 OF 2006

1. Rajender Kumar Dalmia)
2. Devendra Kumar Agarwal)
3. Inderchand Surana)
4. Sitaram Makharia)
5. Surendra Kumar Somani)
6. Omprakash Bubna)
7. Bhim Kumar Kakrania)

Trustees of the Pension and Provident Fund of)
Century Textile & Industries Ltd., a Trust)
recognition under Section 58 B (1) of the Indian)
Income Tax (Provident Funds Relief) Act, 1929)
having their office at Century Bhavan, 2nd floor,)
Dr. Annie Besant Road, Worli, Mumbai-400 030)..Petitioners

Versus

1. State of Madhya Pradesh, through)
Principal Secretary, the Employees Pension)
and Provident Fund Department, Vallabh Bhavan,)
Bhopal.)

2. Madhya Pradesh State Industrial Development)
Corporation Ltd., a Government of Madhya)
Pradesh undertaking, having its address at)
AVN Towers – 192, Zone - 1, MP Nagar,)
Bhopal-462 011.)

3. The Union of India, through the Secretary,)
Ministry of Finance, Department of Revenue,)
North Block, New Delhi-110 001.)..Respondents

Mr. Dinesh Pednekar, instructed by M/s. PDS Legal, for the petitioners.

Mrs. Madhuri Gaikwad for respondent No.3.

CORAM: **SWATANTER KUMAR, C.J.** &
S.C. DHARMADHIKARI, J.

Judgment reserved on : April 10, 2007
Judgment delivered on: April 19, 2007

JUDGMENT : (Per Swatanter Kumar, C.J.):

The petitioners are aggrieved by the inaction of the respondents, who, despite requests, have failed to release the interest as well as the principal amount due to the petitioners. The present writ petition has been filed on the facts that respondent No.2, Madhya Pradesh State Industrial Development Corporation Limited, is the "State" within the meaning of Article 12 of the Constitution of India, and is amenable to the writ jurisdiction of the court. Respondent No.2 is a wholly State owned Company and the State of Madhya Pradesh, respondent No.1, has 100 per cent shareholding in the said Company.

2. In the year 1999, respondent No.2 had made a scheme for raising funds and consequently Rs. 100 crores Secured Non-Convertible Redeemable Bonds were issued through private placement. An information memorandum specifying the highlights of

the issue was circulated. Replying upon the representations made in the said information memorandum, on 20th September, 1999, all the petitioners purchased 36 bonds for Rs. One lakh each at 14.40 per cent of face value of Rs. 36 lakhs bearing certificate No. 124, registered folio No. 117 and bearing distinctive Nos. 1356 to 1391. The money so paid by them for purchase of bonds was utilised by the respondents. Allotment was unilaterally delayed by respondent No.2 and the period of redemption was also revised to 31st January, 2005, in place of January, 2000. On 1st May, 2002, an instalment of interest was due which the second respondent has failed and neglected to pay and the petitioners raised demands vide their various letters including 2nd June, 2003, 16th August, 2003 and 3rd September, 2003. Because of the persistent requests of the petitioners, the respondents vide their letter dated 10th September, 2003, paid a sum of Rs. 2,59,200/- in respect of the interest instalment due as of 1st May, 2002. However, the balance interest as well as the principal amount was not paid. Vide letter dated 19th September, 2003, the petitioners made a request to the respondents to make the payment of Rs.51, 129.86 on account of delay in making the payment which delay was nearly 500 days. Though no payments were made, on 14th May, 2004, respondent No.2 called upon

the petitioners to furnish certain documents failing which it was stated that TDS from the amounts which were payable to the petitioners would be deducted. The details were furnished by the petitioners but still no payments were made, resulting issuance of notice under Section 433 (e) read with Section 434 of the Companies Act, 1956, despite which no payments were made. Respondent No.2 vide their letter dated 19th January, 2005, admitted their liability and showed inability to pay and assured that the dues of the petitioners shall be liquidated shortly.

3. As all the petitioners are trustees of the Century Textile and Industries Limited, a trust recognised under Section 58 B (1) of the Indian Income Tax (Provident Funds Relief) Act, 1929, having their office at Century Bhavan, 2nd floor, Dr. Annie Besant Road, Worli, Mumbai, they filed the present petition under Article 226 of the Constitution of India, praying for issuance of a direction to the respondents to clear their admitted liability and ensure that the interest of the petitioners was not unnecessarily jeopardised.

4. Notice of this petition was ordered to be issued. Affidavit of

service was filed wherein the acknowledgements of the notices issued by speed post from respondent Nos. 1 and 2 have been placed on record along with this affidavit. Despite due service, nobody appeared on behalf of these respondents.

5. The learned counsel appearing for respondent No.3 stated that she has to make no submissions on behalf of the Union of India and the Court can appropriately deal with the matter.

6. In the present case, there is no dispute before us that the amounts claimed by the petitioners are not due to them for any reason whatsoever. The respondent-Corporation had asked the petitioners to furnish certain details failing which deduction of tax at source from payment of interest was to be made. This was responded to by the petitioners, who had furnished an income-tax certificate in regard to the exemption available to them under sub-section 25 of Section 10 of the Income Tax Act, 1961. Thereafter, in response to the notices issued by the petitioners to the respondents demanding their interest and another payments due in relation to the bonds, the second respondent vide their letter dated 19th January, 2005, admitted their

liability and agreed to settle the matter at the earliest. The contents of the said letter are as under:

> Sub: Investment in 14.4% in secured, redeemable, unconvertible bond.
>
> Ref: Your letter No. ACC/PF/2004/571, dated 13th December, 2004.
>
> Dear Sir,
>
> Please refer to your letter on the subject cited above. We have never denied our responsibility to make the payment of principal and interest amount to you. But even our various efforts to recover dues from the various industries who had availed the fund out of the bond issue did not repay in time have been unsuccessful to large extent. We are again to inform you that we have not yet overcome the liquidity problem despite our various efforts and in this background, we are not in a position to make your payment on due date. We are pursuing our efforts on all levels to make recovery but due to matters pending in Courts, delay is being caused.
>
> However, an Action Plan is under preparation for liquidating all our dues to our creditors including the Bond Holders. The said Action Plan will be put up to the Board of Directors for approval whereafter it will be implemented. Since, the rate of interest in the Bonds is too high, we propose to reduce it keeping in line the present rate of interest adopted by RBI and other Financial Institutions. We also propose to get the period of redemption extended to avoid further complications. As soon as the Action Plan is sanctioned by the Board of Directors, we will put it to action and to the needful in the matter and would intimate you of the same.
>
> We hope that you will kindly bear with us and will

not precipitate the matter by taking any other action against us.
We assure you of our sincere efforts to settle the matter at the earliest.

As such, please do not send the bonds for redemption to the MPSIDC meanwhile.

Thanking you, Yours faithfully,
Sd/-
Dy. General Manager."

Despite such assurance which was given more than two years back, respondent No.2 has failed to clear the dues. The petitioners cannot be compelled to wait for the benefits of their investments indefinitely. The petitioners trust invested its monies, obviously keeping in view the element of security for repayment of its dues. The attitude adopted by the Corporation can hardly be justified. It is obligatory upon a Company particularly a Public Sector Company to prevent damage to the confidence of a common man in such public enterprise. There is no justification on record and in fact, as already noticed, the petition has gone uncontested. We are unable to trace any reasonable cause from the documents placed before us. From the documents available on the Court file, the unsatisfactory conduct of the respondents obviously compels the Court to pass appropriate directions to balance the interest of the petitioners.

7. In the facts and circumstances of the case, while declining to issue a mandamus directly for payment of amounts claimed by the petitioners to them, and particularly keeping in view that the matter has proceeded in the absence of respondent Nos.1 and 2, we would direct the Principal Secretary, the Employees Pension and Provident Fund Department, Vallabh Bhavan, Bhopal, as well as the Managing Director of the Madhya Pradesh State Industrial Development Corporation, AVN Towers-192, Zone-1, MP Nagar, Bhopal-462 011, respondent Nos. 1 and 2, to consider the request of the petitioners for payment of interest and other amounts payable to them in accordance with the terms of investment of bonds and ensure that the amounts due to them are paid as expeditiously as possible and a complete reasoned and satisfactory answer is provided to the petitioners within six weeks from the date of receipt of the copy of this order. The petitioners are at liberty to serve copies of this order to respondent Nos.1 and 2. The same may also be despatched by the Registry of the Court to the said concerned Officers. Writ Petition is disposed of with the above directions with no order as to costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.